

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0566**

State of Minnesota,
Respondent,

vs.

Kelsey Christine Bauler,
Appellant.

**Filed April 3, 2023
Affirmed
Reyes, Judge**

Yellow Medicine County District Court
File No. 87-CR-20-226

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Mark Gruenes, Yellow Medicine County Attorney, Granite Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal that her conviction of aiding and abetting first-degree sale of a controlled substance must be reversed because of insufficient circumstantial evidence. We affirm.

FACTS

On March 3, 2020, an agent of the Brown-Lyon-Redwood-Renville County Drug Task Force arranged a controlled purchase of methamphetamine in Granite Falls, Minnesota.¹ The drug operation consisted of an undercover officer and a confidential informant (CI) who planned to buy one ounce of methamphetamine for \$750 from J.R. at a gas station. About a month before the drug operation, appellant Kelsey Christine Bauler's boyfriend, J.R., contacted Jessica Weber for some "dope." Weber had known appellant since kindergarten, and because Weber did not like J.R., she told J.R. that she would talk to appellant only. Weber arranged the drug sale with appellant and had a "full range and flourishing communication" with her.

On the day of the proposed drug sale, plans deviated when J.R. communicated to the undercover officer and CI that appellant would show up instead. J.R. also provided them with a description of appellant and appellant's vehicle. Eventually, a van matching the description provided by J.R. arrived at the gas station.

¹ These facts are based on testimony and evidence received at the jury trial held on October 28, 2021.

Appellant drove the van and approached the undercover vehicle that the undercover officer and the CI were in. She entered the undercover vehicle and directed them to drive to Almich's grocery store in Granite Falls. The undercover officer and CI followed her lead and drove there. Upon arriving, appellant exited the undercover vehicle to buy food at Almich's to avoid "looking suspicious." Weber testified that on the day of the sale, she and appellant had planned to meet at the gas station. However, when appellant did not show, Weber decided to leave town after first stopping at Almich's. At Almich's, Weber received a call from appellant. The undercover officer testified to hearing appellant ask Weber about her location and Weber responding that she was at Almich's.

Appellant and Weber came out of the grocery store, they entered Weber's vehicle, and Weber drove next to the undercover vehicle. Because Weber did not feel comfortable undertaking the drug sale at the grocery store, she suggested they go somewhere else. Weber and appellant entered the undercover vehicle, and the undercover officer drove outside of town by a gravel road. The drug sale took place while the undercover officer was driving and Weber and appellant were in the back seat. The undercover officer "handed [Weber] the money and she gave [the undercover officer] the methamphetamine." Weber and appellant were later arrested. Weber was convicted of first-degree sale of methamphetamine while respondent State of Minnesota charged appellant with aiding and abetting the first-degree sale of methamphetamine in violation of Minn. Stat §152.021, subd. 1(1) (2018). Appellant's case proceeded to a jury trial. The jury found appellant guilty, and the district court sentenced appellant to 48 months in prison. This appeal follows.

DECISION

I. Standard of review

Appellant argues that the state failed to prove beyond a reasonable doubt that she intended to aid and abet in the first-degree sale of methamphetamine. We are not convinced.

When evaluating the sufficiency of the evidence, “appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude defendant’s guilt beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted).

“A person is guilty of controlled substance crime in the first degree if on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 17 grams or more containing methamphetamine.” Minn. Stat § 152.021, subd. 1(1). Moreover, “[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat § 609.05, subd. 1 (2018). “The state must prove that the defendant knew [her] alleged accomplice was going to commit a crime and the defendant intended her presence or actions to further the commission of that crime.” *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016) (quotation omitted). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the

verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted).

II. Weber and the undercover officer’s testimonies constituted direct evidence that appellant knew about the sale of methamphetamine and intentionally aided Weber to commit that crime.

Appellant argues that the circumstantial-evidence standard applies. We disagree. Instead, the record shows that the evidence received at the jury trial is direct evidence. *See State v. Flowers*, 788 N.W.2d 120, 133 n.2 (Minn. 2010) (stating that, when state presented direct evidence on each element of aiding and abetting first-degree murder, court would not apply circumstantial-evidence standard of review).

“[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation and citations omitted). In contrast, “circumstantial evidence [is] evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* While knowledge and intent are generally proved by circumstantial evidence, they may be proved by direct evidence through witness testimony. Witness testimony “is direct evidence when it reflects a witness’s personal observations and allows the jury to find the defendant guilty without having to draw any inferences.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). As discussed below, two of the state’s witnesses presented direct evidence of appellant’s (1) knowledge and (2) intent.

A. Weber's and the undercover officer's testimonies provided direct evidence that appellant knew Weber planned to commit a crime.

Weber's testimony reveals that appellant knew that J.R. had contacted Weber to purchase methamphetamine. Appellant knew this because Weber only wanted to speak with her and not J.R. about the drug sale, making appellant the point person for communicating about the sale. Weber also arranged the price of the drug sale with appellant over the phone as she was arriving at Granite Falls. Later that day, appellant contacted Weber to inquire where she wanted to conduct the drug sale. Weber's testimony provides direct evidence that appellant knew that, by contacting Weber, Weber intended to commit a first-degree controlled-substance sale.

The undercover officer testified that appellant acted as the intermediary between him, the CI, and Weber. Once J.R. would not come, J.R. told the CI and the undercover officer that appellant was "coming up there now. . . then . . . she'll just jump in." J.R. then said, "[I]t [i]s my old lady so." In response, the undercover officer asked if appellant had the "full thing," and J.R. responded with "you . . . talk to her." When appellant arrived at the gas station, she entered the undercover vehicle like J.R. said she would. As a result, the undercover officer's testimony also provided direct evidence of appellant's knowledge of the crime.

B. Weber's and the undercover officer's testimonies presented direct evidence that appellant intended that her presence or actions would further the commission of the crime.

Appellant introduced Weber to the undercover officer and the CI. The undercover officer testified that appellant directed him and the CI to Weber's location at Almich's.

Weber testified that appellant had a “full range and flourishing communication” with her. And when Weber did not feel comfortable conducting the drug sale at Almich’s, appellant could have used this opportunity to retreat but instead she followed Weber’s lead to go to a different location. Appellant entered the undercover vehicle with Weber where the drug sale took place. Appellant’s presence and actions therefore are direct evidence that appellant intended to further the commission of first-degree controlled-substance sale.

Based on the record, there is sufficient direct evidence through Weber’s and the undercover officer’s testimonies to support appellant’s conviction of aiding and abetting the drug sale of methamphetamine.²

Affirmed.

² Because we conclude that the state presented sufficient direct evidence, we need not apply the circumstantial-evidence standard. *See Flowers*, 788 N.W.2d at 133 n.2. Nevertheless, appellant cannot meet that standard. After a careful review, the circumstances proved are consistent only with the hypothesis of guilt and are inconsistent with any rational hypothesis other than guilt. *State v. Cox*, 884 N.W.2d 400, 411 (Minn. 2016).